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No.

In The

Supreme Court of the United States

October Term, 1993

JAMES WILLIAM RINIER AND CARMELLA FORZIATI,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the additional income tax imposed on two-income married couples, by the operation of the federal income tax laws, over what they would have paid if they were unmarried, however unreasonable, deny Petitioners due process and equal protection of the law?

TABLE OF CONTENTS

Page

Question Presented.....i

Table of Contents.....ii

Table of Citations.....iii

Opinions Below.....1

Statement of Jurisdiction.....2

Constitutional Provisions and Statutes Involved.....3

Statement of the Case.....4

A. The Marriage Penalty.....4

B. The Facts.....6

C. Prior Proceedings.....7

Reasons for Granting the Writ.....8

Conclusion.....20

TABLE OF CITATIONS

Page

Cases Cited:

Allegheny Pittsburgh Coal Co. v. County Com'n,
448 U.S. 336 14,15

Boyter v. Commissioner,
668 F.2d 1382 (4th Cir. 1981) 8,10

Gregory v. Helvering, 293 U.S.465 8,10

Hoeper v. Tax Commission of Wisconsin,
284 U.S.206 8,9,10

Johnson v. United States,
422 F.Supp. 958 (N.D. Ind. 1976) 9

Poe v. Seaborn, 282 U.S. 101 5

United States Constitution Cited:

Amendment 5 2

Amendment 14 2

Statutes Cited:

10 N.J.S.A. § 5-3 19

5 U.S.C. § 2301(b)(2) 19

Contents

Page

26 U.S.C. §§ 1(a), 1(c), and 1(d).....2,3

26 U.S.C. § 63(c)(2).....3

26 U.S.C. § 221 (repealed 1986).....6,15

26 U.S.C. § 6013(b)(5).....4

26 U.S.C § 7430.....7

28 U.S.C. § 1254(1).....2

42 U.S.C. § 3604.....19

Economic Recovery Tax Act of 1981,
P.L. 97-34 (1981).....15

Omnibus Budget Reconciliation
Act of 1993 and former Bill (H.R. 2264).....11

Tax Reform Act of 1986, P.L. 99-514 (1986).....16,17,18

Legislative History Cited:

General Explanation of the Treasury Department
Proposals, Volume 2, Treasury Department,
Chapter 2.03 (November 1984).....16

H. Conference Rep. No. 97-215,
page 200 (August 1, 1981).....15,16

Contents

Page

H. Rep. No. 99-426 (December 7, 1985) found at 1986-3 C.B. Volume 2, pages 92, 93.....16,17

S. Rep. No. 97-144, page 29 (July 6, 1981).....15

S. Rep. No. 99-313 (May 29, 1986) found at 1986-3 C.B. Volume 3, page 41, 42.....17

Rule and Regulation Cited:

29C.F.R.§1604.4.....19

Other Authorities Cited:

Working Women: A Chartbook, U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 2385 (August 1991).....13

Philip J. Harmelink, "Marital Status Tax Discrimination After Tax Reform: Proposals to Resolve the Penalty/Bonus Issues," 26 *Willamette Law Review* No. 3, 593 (1990).....18

Alexander Polinsky, "Tax Bill's Stiff Wedlock Penalty Tests Limits of 'Family Values'," 60 *Tax Notes* 11 (July 5, 1993).....11

Contents

Page

Arlene F. Saluter, *Marital Status and Living Arrangements: March 1990*, U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Series P-20, No. 450 (1990).....13

Toni Robinson & Mary Moers Wenig, "Marry in Haste, Repent at Tax Time: Marital Status as a Tax Determinant," 8 *Virginia Tax Review* 773 (1989).....5

Dan Subotnik, "The Marriage Tax Revisited: An Analysis of the Tax Consequences of Marriage," 90 *West Virginia Law Review* No. 4, 1127 (1988).....18

Barry Windheim and Charles Crossed, "Salaries and Wages Reported on Income Tax Returns, by Marital Status and Age, 1983," Internal Revenue Service, *Statistics of Income Bulletin*, 65 (Winter 1987-1988).....13,14

Harvey S. Rosen, "The Marriage Tax is Down But Not Out," 40 *National Tax Journal* 567 (1987).....6,18

"Tax Report: Wedding Bells in December could be costly for some two-income couples," *The Wall Street Journal*, December 16, 1992, at A1.....11,12

Contents

Page

Murray Dubin, "Unaltared states: More and more have not married," *The Philadelphia Inquirer,* July 17, 1992, at A2.....12

Tom Herman, "Some Last-Minute Steps to Cut'91 Tax Bills," *The Wall Street Journal,* November 21, 1991, at C1.....12

Ellen E. Schultz, "Living in Sin to Cut Tax Bill Would Look Even Better to Some Under Clinton Plan," *The Wall Street Journal,* March 9, 1993, at C1.....11

Black's Law Dictionary, 1428 (6th ed. 1990).....10

APPENDIX

Appendix A - Judgment of the United States Court of Appeals for the Third Circuit Filed May 19, 1993.....1a

Appendix B - Opinion and Order Granting Defendant's Cross Motion for Summary Judgment of the United States District Court for the District of New Jersey Filed August 21, 1992.....2a

No.

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OCTOBER TERM, 1993

JAMES WILLIAM RINIER AND CARMELLA FORZIATI,

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Respondent.

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The decision of the United States Court of Appeals for the Third Circuit, Docket Number 92-5491, affirming without opinion, is located in Appendix A to this Petition.

The opinion of the United States District Court, District of New Jersey, Docket Number 92-1594, granting defendant's motion for summary judgment is located in Appendix B to this Petition.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered on May 19, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment 5 of the United States Constitution provides in pertinent part:

> No person shall. . .be deprived of life, liberty, or property, without due process of law. . ..

Section 1, Amendment 14, of the United States Constitution provides in pertinent part:

> . . . No State shall. . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

26 U.S.C. § 1 provides in pertinent part:

(a) MARRIED INDIVIDUALS FILING JOINT RETURNS. . .-There is hereby imposed on the taxable income of-(1) every married individual. . . who makes a single return jointly with his spouse. . .a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $32,450	15% of taxable income.
Over $32,450 but not over $78,400	$4,867.50, plus 28% of the excess over $32,450.
Over $78,400	$17,733.50, plus 31% of the excess over $78,400.

* * *

(c) UNMARRIED INDIVIDUALS. . .There is hereby imposed on the taxable income of every individual. . .who is not a married individual. . .a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $19,450	15% of taxable income.
Over $19,450 but not over $47,050	$2,917.50, plus 28% of the excess over $19,450.
Over $47,050	$10,645.50, plus 31% of the excess over $47,050.

(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.-There is hereby imposed on the taxable income of every married individual. . .who does not make a single return jointly with his spouse. . .a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $16,225	15% of taxable income.
Over $16,225 but not over $39,200.	$2,433.75, plus 28% of the excess over $16,225.
Over $39,200	$8,866.75, plus 31% of the excess over $39,200.

* * *

26 U.S.C. § 63 (c)(2) provides in pertinent part:

BASIC STANDARD DEDUCTION.-. . .the basic standard deduction is-

(A) $5,000 in the case of-

(i) a joint return, or. . .

(C)$3,000 in the case of an individual who is not married. . .

(D)$2,500 in the case of a married individual filing a separate return.

STATEMENT OF THE CASE

A. The Marriage Tax Penalty

The marriage tax penalty is the additional tax that married couples with two income-earners owe over what they would have owed if they were allowed to file as single persons. This mainly occurs due to the different tax rates for married and single individuals, as well as, the different standard deductions. Basically, two single individuals can have more income in the lowest marginal tax bracket than two married individuals when both have income. Thus, the income of the second spouse is taxed at a higher rate, which usually results in greater tax owed by the couple than if both could have calculated their tax as single individuals. The Internal Revenue Code (Title 26, U.S.C.) does not permit married persons to file as single and pay a lower tax. If a couple filed as single when they were married, they could possibly face negligence or fraud penalties per 26 U.S.C. § 6013(b)(5).

Although there can be an income tax benefit for married taxpayers when only one spouse has income, the increased participation of women workers, the increase in unmarried individuals and the increase in the number of divorces, warrants concentration on the penalty aspects. Simply put, the very existence of the marriage tax factor allows a couple the ability to arbitrage their marital status while not sacrificing their relationship. If a couple can benefit from not being married, then an incentive exists for them to either not marry or obtain a divorce.

At one time, all taxpayers were taxed at the same rate.

The beginning of the end of that equality started with *Poe v. Seaborn*, 282 U.S. 101. This Court held that married couples living in community property states could split their income. As a result of this ruling, married couples living in a community property state could divide their income in half regardless of who earned what income. This produced a lower income tax. Between 1939 and 1947, five states and the territory of Hawaii adopted community property laws to take advantage of the tax benefit for its residents. By 1948, Congress amended the Code by the Revenue Act of 1948 to tax both the husband and wife as if they were two single people and their total income was split in half between themselves. The new joint return provisions were adopted to equalize the married taxpayers in non-community property states with the same in community property states. In 1951 and 1954, Congress added the head of household rate schedule and surviving spouse rate schedule, respectively. By 1969, the single taxpayers who were not a head of household or surviving spouse demanded relief due to the amount of taxes they were paying. Congress therefore added another tax rate for married taxpayers filing separate returns and denied married couples the right to use the new single taxpayer rate schedules. Thus, the birth of the present marriage tax penalty. One should take particular note that the married filing joint status did not start out as an intended benefit for the married, but in reality to "stem the flight" of states to the "unfamiliar and complicated property relationships" of community property systems and provide the same effect to all of the states. See generally Toni Robinson & Mary Moers Wenig, "Marry in Haste, Repent at Tax Time: Marital Status as a Tax Determinant," 8 *Virginia Tax Review* 773, 776-783 (1989).

The last legislative attempt to curb the marriage tax penalty was the deduction for two-wage earner married couples per 26 U.S.C. § 221 for tax years 1982 to 1986. A deduction of 10% (5% for 1982) of the lessor of $30,000 or the earned income of the spouse with the lower earned income was allowed. Although "the two-earner deduction did not eliminate the marriage tax, it did reduce its magnitude." See generally Harvey S. Rosen, "The Marriage Tax is Down But Not Out," 40 *National Tax Journal* 567, 568 (1987). The Tax Reform Act of 1986 repealed 26 U.S.C. § 221.

B. The Facts

The following material facts are undisputed or beyond dispute. Petitioners, James William Rinier and Carmella Forziati were legally married in the State of New Jersey on December 1, 1990 and reside at 110-D Haddon Hills, Haddonfield, New Jersey 08033. For calendar year 1990, James Rinier had an adjusted gross income of $39,082 and Carmella Forziati had an adjusted gross income of $19,522. In completing their joint 1990 Form 1040 tax return, itemized deductions were $6,462, their exemptions were $4,100, which computed to a taxable income of $48,042. Their tax liability was $9,229. The Petitioners timely filed their return on or before April 15, 1991 with the Internal Revenue Service Center at Holtsville, New York. Petitioners timely paid $6,478 of the total $9,229 tax on the return. The remaining balance of $2,751 along with interest and penalties of $59.34 were paid through an established installment agreement of $400 per month. The remaining balance was paid on September 7, 1991 and a refund of $10.98 for interest and penalties was received by the Petitioners on or about September 20, 1991.

On or about February 28, 1992, Petitioners filed a Form 1040X claim with the Internal Revenue Service Center at Holtsville, New York, for a refund of federal income tax paid for 1990 in the amount of $922 together with interest as allowed by law. The $922 refund is the result of redetermining the tax liability to $8,307, an amount owed for 1990 as if Petitioners had been afforded the opportunity to file as unmarried. On or about March 20, 1992, the Internal Revenue Service rejected the claim.

C. Prior Proceedings

On or about April 14, 1992, Petitioners filed a complaint in the United States District Court in Camden, New Jersey seeking the refund of $922, plus interest and costs allowed by law, and such other relief as the Court may deem just under 26 U.S.C. § 7430. Respondent filed an answer on July 2, 1992. Petitioners filed a Motion for Summary Judgment on July 27, 1992 to be heard on August 21, 1992. Respondent filed a Cross-Motion for Summary Judgment on August 5, 1992 for the same return date.

On August 21, 1992 the U.S. District Court granted Respondent's Cross-Motion for Summary Judgment. Petitioners filed a Notice of Appeal on August 31, 1992 in the United States Court of Appeals for the Third Circuit. On December 28, 1992, Petitioners filed their Brief with the United States Court of Appeals. The Respondent filed their Brief with the United States Court of Appeals on January 26, 1993. On February 2, 1993, the Petitioners requested Oral Argument in a letter to the Clerk of the Court. The Petitioners filed their Reply Brief on February 9, 1993.

On May 19, 1993, a panel of the United States Court of Appeals for the Third Circuit affirmed the District Court, without opinion.

REASONS FOR GRANTING THE WRIT

1. Directly in conflict with the decision of the Third Circuit in the instant case is the decision of the Court of Appeals for the Fourth Circuit in *Boyter v. Commissioner*, 668 F.2d 1382 (4th Cir. 1981) and the decisions of this Court in *Hoeper v. Tax Commission of Wisconsin*, 284 U.S. 206 and *Gregory v. Helvering*, 293 U.S. 465. For the married taxpayer who pays more income tax simply and solely for being married, the standard of substance over form on the one hand, which should have protected the married taxpayer was ignored by the lower courts, and on the other was used against the married taxpayer, as a review of the cases demonstrate.

"We have no doubt that, because of the fundamental conceptions which underlie our system, *any attempt* by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the Fourteenth Amendment" (emphasis added). As ruled by this Court in *Hoeper*, supra at 215. As this Court continued at 215, "What Wisconsin has done is to tax as a joint income that which under its law is owned separately, and thus to secure a higher tax than would be the sum of the taxes on the separate incomes." This Court had Reversed and Remanded a Wisconsin Supreme Court decision that had upheld the attribution of income between a husband and wife for purposes of an income tax. This Court's decision plainly

does not allow a government to establish a tax system that both attributes income from one person to another and creates an additional tax. Both cases measure the tax on one person's income by reference to the income of another resulting in a greater tax. The result is the same whether they file a joint or separate returns.

The U.S. Supreme Court's opinion in *Hoeper*, supra should be enough to invalidate the income tax laws that create the additional tax known as the marriage tax penalty. However, the cases concerning this problem as listed by the U. S. District Court in the instant case have not done so. The initial misapplication of substance over form was in the decision of the United States District Court of N. D. Indiana in *Johnson v. United States*, 422 F.Supp. 958 (N.D. Ind. 1976) at 966 to 968 in the discussion of the *Hoeper*, supra opinion:

> The federal law, on the other hand, contains no such compulsory income aggregation provision. If married persons each elect to file separate returns, each may do so, and the tax computed is based *solely upon each taxpayer's own separate income*. It is true that in most instances it is more advantageous for the couple to file a joint return because the rates of § 1(d) applicable to separate return income are generally higher, and at least always equal, to those provided in § 1(a). However, the fact remains that each married taxpayer may make the individual choice to file a separate return and thus avoid "attribution" of his income, if that it be, to the income of his spouse. Any aggregation of the two spouses' income in a joint return is entirely a *voluntary* matter. Therefore, as distinguished from Wisconsin, the federal government has not attempted to make income that which is not in fact the taxpayer's income merely by calling it such. (emphasis added).

Did not this Court state that "any attempt" is unconstitutional?

This Court's decision in *Hoeper*, supra should have applied in all of the past cases concerning the marriage tax penalty based on the concept of substance over form. The substance vs. form concept is defined as "A standard used, commonly in taxation, to ascertain the true reality of what has occurred" per *Black's Law Dictionary* 1428 (6th ed. 1990). Is aggregation indeed voluntary as stated above? True, a married individual can voluntarily choose to file Married Separate or Married Joint, but either choice is really the same penalty due to the structure of the tax rates and the standard deduction. A married person cannot choose the unmarried status. Thus, attribution still occurs in substance.

The concept of substance over form was used in the U.S. Court of Appeals, 4th Circuit against a married couple who made use of year-end divorces to avoid the marriage tax penalty in *Boyter v. Commissioner*, supra. The Court used the sham transaction doctrine that had its "genesis" in *Gregory v. Helvering*, supra. Whether the state of Maryland, the taxpayers' resident state, recognized their divorce and remarriage was not the determining factor. The substance of the transaction, or in other words the transaction as a whole and not the sum of the component parts were viewed as a single event. At present, there is a conflict of authority concerning the marriage tax penalty between *Hoeper*, supra, and *Boyter*, supra. The lower Courts have allowed the federal government to use the Married Filing Separate rates despite the end result being a higher tax while disallowing married taxpayers to get divorced to avoid paying the additional tax. The Respondent should be held to the same concept of substance over form as the taxpayer. Moreover, the lower Courts have failed to discuss why substance over

form does not apply.

2. The challenged classification has had a direct impact on the number of marriages in the United States and will continue to penalize the married taxpayer. The income tax laws have been and as evidenced by the recent passage of the Omnibus Budget Reconciliation Bill of 1993 (H.R. 2264), will continue to make it more profitable for taxpayers to live together and not get married and for married taxpayers to get divorced. As noted by Alexander Polinsky in his recent article, "Tax Bill's Stiff Wedlock Penalty Tests Limits of 'Family Values'," 60 *Tax Notes* 11 (July 5, 1993), the tax provisions of the then current bill contain an ". . .exacerbation of the tax penalty imposed on people who decide either to get married or stay married." Moreover, as President Clinton's tax revenue raising plans were disclosed, *The Wall Street Journal* outlined the results of the new tax law that "[m]aybe living in sin isn't so bad, after all. In fact, some working couples probably can't afford not to. . ." in an article by Ellen E. Schultz, "Living in Sin to Cut Tax Bill Would Look Even Better to Some Under Clinton Plan," *The Wall Street Journal*, March 9, 1993, at C1. Both articles explain how the current changes in law penalizes the low-income families and the elderly as well. The President and Congress has further demonstrated by the recent passage of the new tax law that although family values is a concern for them in speeches and political campaigns, in practice their actions are against marriages and families.

Before the introduction of the new tax bill, *The Wall Street Journal* published on December 16, 1992 a warning to soon to be married two-income couples on the front page under its

Tax Report, that "a bizarre tax-law quirk known as the "marriage penalty" results from tax rates that are less favorable to joint filers and cutbacks in itemized deductions and personal exemptions. Thus many couples wind up owing higher combined taxes than they would have had they remained single." Also, last year *The Wall Street Journal* warned that "because of various tax-law quirks, a two-income married couple often winds up owing more tax than two individuals would owe if they were single and filing separately" in "Some Last-Minute Steps to Cut '91 Tax Bills," page C1 by Tom Herman on November 21, 1991. The article recommends that postponement of the marriage ceremony until next year could pay for the honeymoon.

If a couple was going to postpone their marriage for one year, why not for a few years, or better yet, why not just live together and forget marriage altogether? The marriage penalty saved over a number of years could equate to a new car or a down payment on a house. According to the following statistics, many couples appear to have followed that reasoning.

The Bureau of Census recently reported via Murray Dubin, "Unaltared states: More and more have not married," *The Philadelphia Inquirer*, July 17, 1992, at A2 that "about one-fourth of American adults 18 and older have never been married - 41.5 million - nearly twice the 21.4 million who were never married in 1970." The report furthers that the one reason for the increase of never-marrieds is delayed marriage. The Census also showed that even larger than the increase of never-married adults is the increase of divorced adults, which has tripled from 4.3 million to 15.8 million for the same

time period.

The U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census reported on *Marital Status and Living Arrangements: March 1990*, Series P-20, No. 450. Arlene F. Saluter concluded that "the proportion of young adults who have not yet married has been growing rapidly during the past two decades. . . Between 1970 and 1990, the proportion of 20- to 24- year-olds who had never married increased from 36 to 63 percent for women and from 55 to 79 percent for men. The proportion never married for 25- to 29-year-olds tripled for women (from 11 to 31 percent) and more than doubled for men (from 19 to 45 percent)." Concerning divorce, the number of divorced persons to married persons living with their spouses was 142 per 1,000 in 1990 and 47 per 1,000 in 1970, which represents for 1990 an increase of three times the ratio in 1970. And finally, the number of unmarried-couple households has grown from 523 thousand in 1970 to 2,856 thousand in 1990, an increase of almost 5 and half times.

Although the number of married couples has been substantially decreasing, the number of two-wage earner married couples has been increasing. The number of married-couple families where both spouses were in the labor force went from 28 percent in 1960 to 54 percent in 1990 as reported by U.S. Department of Labor, Bureau of Labor Statistics, on page 33 of *Working Women: A Chartbook*, August 1991, Bulletin 2385.

Even the Internal Revenue service reported that "the proportion of two-earner couples has increased significantly since the late 1960's. For 1960, 46.0 percent of all joint

returns with salaries and wages showed earnings from both husband and wife. The percentage of such returns increased to 49.0 percent for 1974, to 53.0 percent for 1979, and to 57.0 percent for 1983." The report was given in its *Statistics of Income Bulletin*, Winter 1987-1988, page 65, in an article entitled "Salaries and Wages Reported on Income Tax Returns, by Marital Status and Age, 1983," written by Barry Windheim and Charles Crossed.

3. Past cases, which recognized the existence of the marriage tax penalty and were reluctant to overrule, have become infirm due to: the passage of time; the legislature finding a reasonable solution and then repealing it; and the current trend to not discriminate on the basis of marital status.

It is now up to twenty-two years since the marriage tax penalty has been in existence. How long will the Courts allow Congress to continue levying the "marriage tax penalty"? As each year passes for those two-wage earner couples who are married and remain married, the amount of the penalty increases since each year is added onto the other. Thus over a period such as the last twenty-two years, a married couple could have paid well into the tens of thousands of dollars in additional taxes only because they have married. And if they did not exercise their fundamental right of marriage and simply lived together, they would have saved the additional tax.

The Supreme Court in *Allegheny Pittsburgh Coal Co. v. County Com'n*, 448 U.S. 336 has recently with an unanimous Court, ruled that unequal assessments for property tax purposes by a West Virginia county violated the equal

protection clause because "the Clause requires that such general adjustments be accurate enough to obtain, over a short period of time, rough equality in tax treatment of similarly situated property owners." The Court further noted that for more than 10 years with little change the discrepancies continued. The marriage tax penalty has continued for at least twenty-two years. The two classes are the two-wage earner married couple and the unmarried couple living together. As demonstrated previously, the tax disadvantaged two-earner married couple is decreasing and the unmarried couple living together has been increasing in the last two decades. The Supreme Court in *Allegheny Pittsburgh Coal Co.*, supra, did not rule that property tax assessments have a constitutional defect, just that the Equal Protection Clause "applies only to taxation which in fact bears unequally on persons or property of the same class." The Petitioners are not arguing against the income tax system, just the existence of the marriage tax penalty within the system.

The previous Courts also discussed the difficulty of finding a solution. Congress did find a reasonable solution, it was the deduction for two-earner married couples that was found in 26 U.S.C. § 221 and passed under the Economic Recovery Tax Act of 1981, P.L. 97-34 (1981). As reported in S. Rep. No. 97-144 (July 6, 1981) on page 29, "the committee is concerned about the marriage tax penalty, and has decided that a suitable response to this problem is to allow married couples a new deduction equal to a percentage of the earnings of the spouse with lower earnings." The House explained the measure and what the deduction would be in the H. Conference Rep. No. 97-215 (August 1, 1981) on page 200 concerning their bill. "Under present law, married taxpayers generally are treated as a single taxpaying unit. If

married taxpayers elect to file separate rather than joint returns, they usually pay a higher tax. The differing rate schedules for single and married taxpayers give rise to a marriage penalty when two single wage earners of relatively equal income marry each other. The House bill allows couples filing a joint return a deduction in computing adjusted gross income equal to a percentage of the lower earnings spouse's qualified earned income (up to $30,000 of income). In 1982, the percentage will be 5 percent (up to a $1,500 maximum deduction) and in 1983 and subsequent years the percentage will be 10 percent (up to a $3,000 maximum deduction)."

The reasonable solution that Congress had found was repealed by the Tax Reform Act of 1986, P.L. 99-514 (1986). The Treasury Department in Volume 2, General Explanation of the Treasury Department Proposals (November 1984) reported in Chapter 2.03 the reasons for change on the repeal of the two-earner deduction, ". . . taxing a married couple on the same basis as two single persons with equivalent combined income ignores that married couples frequently pool their income and may benefit from shared living expenses." As far as ignoring, this statement obviously ignores the growing number of unmarried couple households. The report goes on to recommend flatter tax rates as a solution.

Both the Senate and the House concurred. In H.Rep. No. 99-426 (December 7, 1985) found at 1986-3 C.B. Volume 2, page 92, the House felt that the, "Adjustments made in the standard deduction for married couples filing joint returns and in the relationship of the rate schedules for unmarried individuals and married couples filing joint returns compensate

for the repeal of this provision." The Senate concurred with the House in with almost the same wording as stated in S. Rep. No. 99-313 (May 29, 1986) found at 1986-3 C.B. Volume 3, page 41.

Granted, the deduction was not a complete solution to the marriage tax penalty and there are other solutions available, but the Tax Reform Act of 1986's repeal of the two-earner deduction was unfortunately a step backwards in an attempt to alleviate the marriage tax penalty. The adjustments discussed did not compensate for the repeal of the provision as both houses reported.

First, if there was compensation by the adjustments of the standard deductions and the rate schedules, why do both houses report that the repeal of the deduction will increase fiscal year budget receipts? The House reported in H. Rep. No. 99-426, supra, at page 93 that fiscal year budget receipts will increase by $1.4 billion in 1986 and up to $6.8 billion by 1990. The Senate reported in S. Rep. 99-313, supra, at page 42 that fiscal year budget receipts will increase by $1,428 million in 1987 and up to $6,609 million in 1991. Their reports are inconsistent in themselves. They report that the adjustments will compensate themselves, which should equate to a zero increase in tax. However, at the same time they report a revenue increase on the very next page. This lack of consistency within the same report only a page apart demonstrates an irrational decision. How can their reports conclude that the leveling of the tax rates will even out the penalty when on the next page the report states that there will be a tax increase? The 1986 act was a large and comprehensive revision of the Internal Revenue Code. As

pointed out later by the scholars in this Writ and as demonstrated by the lack of consistency, Congress probably was only guided by raising revenue and passing the new law instead of considering the effects of the repeal of the two-wage earner deduction. The increase represents the gross revenue from the marriage tax penalty.

Secondly, many scholars have recognized the the Tax Reform Act of 1986 did not stop the discrimination against two-earner married couples and have recommended that it should be corrected. Philip J. Harmelink stated that ". . . there is still considerable marital status tax discrimination resulting from the post-TRA (Tax Reform Act of 1986) tax rate structure. . ." reported in Philip J. Harmelink, "Marital Status Tax Discrimination After Tax Reform: Proposals to Resolve the Penalty/Bonus Issues", 26 *Willamette Law Review* No. 3, 593, 594 (1990). Dan Subotnik reported, ". . . although it is widely known that the marriage tax and bonus were not eliminated by the Tax Reform Act of 1986 (TRA 86), the extent to which those features have survived and changed under the Act is only now becoming apparent; and the economists who are providing data on the subject are already beginning to ask whether, under the new law, married couples are being treated fairly." See Dan Subotnik, "The Marriage Tax Revisited: An Analysis of the Tax Consequences of Marriage", 90 *West Virginia Law Review* No. 4, 1127, 1128 (1988). And shortly after the passage of the Tax Reform Act of 1986, Harvey S. Rosen recognized the new law creates large taxes on being married for some couples and that the marriage tax still exists. See Harvey S. Rosen, "The Marriage Tax is Down But Not Out," supra.

Even the Petitioners' state of New Jersey has declared in its statutes that the, ". . . Legislature finds and declares that practices of discrimination against any of its inhabitants, because of . . .marital status,. . .are a matter of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State. . ." at 10 N.J.S.A. Section 5-3. The Section does allow legitimate distinctions necessary to promote the national interest. The national interest is definitely to promote marriages.

The federal legislature and agencies have recognized that discrimination due to marital status is wrong. The Equal Employment Opportunity Commission published in 29 C.F.R. Section 1604.4 that discrimination against married women is discrimination based on sex prohibited by title VII of the Civil Rights Act. The merit system principles applicable to the Executive agency, Administrative Office of the United States Courts, and the Government Printing Office requires that "all employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to . . .marital status. . .." See 5 U.S.C. § 2301(b)(2). And in the area of fair housing, discrimination in the sale or rental of housing is unlawful in regards to familial status as well as race, color, religion, sex, and national origin. See 42 U.S.C. § 3604.

CONCLUSION

The present case offers an opportunity for this Court to decide the extent to which the Congress and the President can impose an additional income tax on two-income married couples by the operation of the federal income tax laws over what they would have paid if they were unmarried.

Respectfully submitted,

JAMES W. RINIER
Pro Se

and

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Dated: August 14, 1993

APPENDIX A - JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT FILED MAY 19, 1993

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

92-5491

JAMES WILLIAM RINIER AND CARMELLA FORZIATI,
Appellants,

v.

UNITED STATES OF AMERICA
Appellee.

JUDGMENT ORDER

ON APPEAL from the UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
in CASE NO. 92-1594

After consideration of all contentions raised by appellants, it is

ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed. Costs taxed against appellants. (SLOVITER, Chief Judge, HUTCHINSON and ROTH, Circuit Judges)

ENTERED BY ORDER OF THE COURT

DATED MAY 19, 1993

s/ P. Douglas Sisk
P. Douglas Sisk, Clerk

APPENDIX B - OPINION AND ORDER GRANTING DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY FILED AUGUST 21, 1992

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

92-1594

JAMES WILLIAM RINIER AND CARMELLA RINIER,
Plaintiffs,

v.

UNITED STATES,
Defendant.

OPINION AND ORDER GRANTING DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT

JOSEPH E. IRENAS, District Judge:

This matter comes before the court upon plaintiff's motion for summary judgment under Fed. R. Civ. P. 56(c). The United States has filed a cross motion for summary judgment. The gravamen of plaintiff's complaint is that because the

Appendix B

Internal Revenue Code taxes married and unmarried persons at different rates creating, in effect, a "married tax penalty," it is in violation of the Due Process and Equal Protection Clauses of the fourteenth amendment. Because there is clear Third Circuit precedent on point, defendant's cross motion for summary judgment is granted.

The court notes at the outset that the issue plaintiff raises is one that has received more than insubstantial attention from the judiciary. Prior courts have noted that "the perplexities of shaping a legislative scheme which distributes the incidence of the personal income tax equitably between married and single tax-payers have confounded Congress for many years." *Pierce v. Commissioner*, 41 T.C.M. 580 (1980) aff'd by unpublished order 688 F.2d 823 (3d Cir. 1982). While the equity of devising such a tax structure may be difficult to discern, the current law on the issue is not.

In *Pierce* the court squarely held that the so called, "marriage tax penalty" is not unconstitutional. Several other courts have also upheld the constitutionality of the "marriage tax penalty." *Druker v. Commissioner of Internal Revenue* 697 F.2d 46 (2d Cir. 1982); *Mapes v. United States*, 576 F.2d 896 (Ct. Cl. 1978), cert. denied 439 U.S. 1046 (1978); *Johnson v. United States*, 422 F.Supp. 958 (N.D. Ind. 1976),

aff'd sub nom *Barter v. United States*, 550 F.2d 1239 (7th Cir. 1977). While plaintiff makes several reasonable arguments on policy and sociological grounds, in the face of the cases cited above to the contrary, they have little legal bearing on this issue.

Plaintiff has pointed out that to partially offset the burden of the "marriage penalty," Congress provided a deduction for "two earner married couples" in the Economic Recovery Tax Act of 1981, which was codified at 26 U.S.C. § 221. Plaintiff's Brief at 12. This deduction was, however, repealed by the Tax Reform Act of 1986, P.L. 99-514 (1986). To the extent this evinces legislative intent on the issue, it supports the inference that Congress approves the "marriage tax penalty" and has specifically intended not to ameliorate its effect vis-a-vis single persons.

Because the law is well-settled on this point, and because plaintiff has not stated a viable due process or equal protection argument, the court need not employ any specific fourteenth amendment analysis. Because plaintiff's claim raises no genuine issues of material fact, and the "marriage tax penalty," does not violate plaintiff's rights under the fourteenth amendment, defendant's motion for summary judgment is granted.

Appendix B

For the reasons stated above,

IT IS on this 21st day of August, 1992

ORDERED that defendant's motion for summary judgment is GRANTED.

s/ Joseph E. Irenas
Joseph E. Irenas
U.S.D.J.

DATED: August 21, 1992